FILED
DEC 26 1990
OFFICE OF THE CLERK

(1)

90-1282

No. _____

IN THE

Supreme Court of the United States

October 1990 Term

REHAB AMER and AHMED AMER,

Petitioners,

v.

DEPARTMENT OF SOCIAL SERVICES,

Respondent.

On Writ of Certiorari To
the Court of Appeals of the State of Michigan

PETITION FOR A WRIT OF CERTIORARI

RICHARD A. SEID (P23642)
Counsel for Petitioners
651 East Jefferson
Detroit, Michigan 48226
313-596-0207

ABS Duplicators, Inc. -- 912 17th Street, NW, Washington DC 20006 - 202-298-5537

QUESTIONS PRESENTED FOR REVIEW

I. WHETHER PARENTS, INCLUDING THE PETITIONERS, ARE PERMANENTLY DEPRIVED OF PARENTAL RIGHTS TO THEIR CHILDREN WITHOUT DUE PROCESS OF LAW GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES IF:

1. THE TRIAL COURT TERMINATES PARENTAL RIGHTS RELYING ON THE FINDINGS OF A DIFFERENT JUDGE RENDERED IN A PRIOR HEARING AT WHICH A PREPONDERANCE OF THE EVIDENCE IS SUFFICIENT FOR FINDINGS, RATHER THAN THE CLEAR AND CONVINCING STANDARD REQUIRED BY *SANTOSKY V. KRAMER* IN PERMANENT TERMINATION PROCEEDINGS;

2. THE TRIAL COURT TERMINATES PARENTAL RIGHTS BASED EXCLUSIVELY AND PRESUMPTIVELY ON THE REFUSAL TO CONFESS TO INTENTIONALLY HARMING A CHILD PRIOR TO A CLEAR AND CONVINCING FINDING THAT THE PARENTS INTENTIONALLY HARMED THE CHILD.

3. THE TRIAL COURT TERMINATES PARENTAL RIGHTS DESPITE A PREPONDERANCE OF THE EVIDENCE, INCLUDING TESTIMONY OF THE COURT'S OWN EXPERTS THAT TERMINATION OF PARENTAL RIGHTS WAS UNWARRANTED.

4. INVOLUNTARY TEMPORARY FOSTER CARE IS OF UNLIMITED DURATION BASED UPON A MERE PREPONDERANCE OF THE EVIDENCE WHICH AFTER TWO YEARS SHIFTED THE BURDEN OF PROOF TO THE PARENTS.

II. WHETHER THE REFUSAL TO PROVIDE SERVICES TO EFFECTUATE REUNIFICATION OF THE FAMILY DURING TEMPORARY FOSTER CARE, AND THE ABSENCE OF A GOOD FAITH PLAN FOR REUNIFICATION VIOLATES FEDERAL STATUTES AND REGULATIONS APPLICABLE TO FOSTER CARE.

TABLE OF CONTENTS[1]

Page

QUESTIONS PRESENTED FOR REVIEW i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

APPENDIX viii

OPINIONS BELOW 1

JURISDICTION OF THE UNITED STATES SUPREME COURT 2

DATES OF LAST OPINIONS OF THE COURTS BELOW 2

FEDERAL LAW INVOLVED 2

RAISING THE FEDERAL QUESTIONS BEFORE THE MICHIGAN COURT 2

REASONS FOR GRANTING CERTIORARI 3

INTRODUCTION 4

STATEMENT OF THE CASE 5

- Permanent Termination Hearing 5
- Brief Summary of Two Hearings Prior To Termination 6
- First Adjudication — More Detailed 8
- Second Adjudication — More Detailed 10
- Judge Barsamian Enters the Case 12

[1]Mohammed Ali Amer, Suehier Ahmed Amer, and Zinabe are parties to this proceeding and are represented by William E. Ladd.

Page

The Decision of Permanent Termination 13

Expert Testimony Opposed to Termination 15

No Efforts to Reunite the Family 16

Evidence Favoring Termination: 17
Refusal to Confess as Clear and Convincing Evidence for Termination

The Michigan Court of Appeals Opinion 20

How Did Samier Die? 21

ARGUMENTS FOR ALLOWANCE OF THE WRIT 21

A Fundamental Right 22

Clear and Convincing 23

Irrebuttable Presumptions 25

Confession and Fifth Amendment 25

The Michigan Statutory Scheme for Terminating Parental Rights was Unconstitutional on its Face 28

The Respondents Violated Federal Statutes with Respect to Foster Care 29

The Probate Court Displayed Bias and Prejudice 30

CONCLUSION 30

TABLE OF AUTHORITIES

Cases: Page

Baltimore City Department of Social Services v. Bouknight, 110 S. Ct. 900 (1990) 28

Colorado v. New Mexico, 467 U.S. 310 (1984) 24

Cruzan v. Director, Missouri Department of Health, 101 S.Ct. 2841 (1990) 24

State Department of Human Services v. L.D., 658 S.W.2d 112 (Tenn. Ct. App. 1983) 23

Dutchess County Dep't. of Soc'l. Serv. ex rel. T.G., v. Mr. G., 141 Misc.2d 641, 534 NYS 2d 64, 69-70 (Fam. Ct.1988) 26, 27

Elmer v. Lucas County Children's Serv. Bd., 36 Ohio App. 3d 241, 523 NE 2d 540 (1987) 23

Fisher v. Dist. Court, 424 US 382 (1976) 24

Francis v. Franklin, 471 U.S. 307 (1985) 25

Griswold v. Connecticut, 381 U.S. 479 (1965) 24

In re J.W., 415 N.W.2d 879 (Minn. S.Ct. 1987) 27

Jacobs v. Smith, 433 Mich 24, 444 N.W. 2d 789 (1989) 23

In re Jessica B., 207 Cal. App. 3d 504, 254 Cal Reptr 833 (1989) 27

Page

In re Lay,
43 Ohio App. 3d 78, 539 NE 2d 664 (1987) 23

Lefkowitz v. Cunningham,
431 U.S. 801 (1977) 26

Lehman v. Lycoming County Children's Services Agency,
458 U.S. 502 (1982) 3

In re Martin,
167 Mich App. 715, 423 NW2d 327 (1988) 4, 26

Mathews v. Eldridge,
424 U.S. 319 (1976) 22

May v. Anderson,
346 U.S. 528, 533 (1953) 24

In the Matter of Mohammed Ali Amer (Appendix H)
Michigan Court of Appeals (June 12, 1990) 23

Moore v. Sims,
442 U.S. 415 (1979) 11 3

Morton v. Moncari,
417 U.S. 535 (1974) 24

Palmore v. Sidoti,
466 U.S. 429 (1984) 24

Riviera v. Minnich,
483 U.S. 745 (1987) 24

Santosky v. Kramer,
455 U.S. 745 (1982) 3, 4, 22, 24, 28

Stanley v. Illinois,
405 U.S. 645 (1973) 24

State v. Denney,
130 N.H.217, 536 A.2d 1242 (1987) 4

Page

Matter of Sylvester,
Pa.300, 304, 555 A.2d 1202, 1203-04 (1989) 25

Washington v. Yakima,
439 U.S. 463 (1978) 24

Washington County Department of Social Services
v. Mary Alice Clark,
296 Md.190, 461 A.2d 1077 (1983) 25

Younger v. Harris,
401 U.S. 37 (1971) 3

Statutes:

25 U.S.C. 24

28 U.S.C. § 1257 2

United States Constitution

Amendment VIX 28

Amendment V 25, 26

42 U.S.C. § 671(a)(15)(16) 29

42 U.S.C. § 672(a)(1); 42 U.S.C. § 675(1) 29

MCR 5.974(E)(3) 5

MCL § 712A.19a(e) and (f) 14

MCR 5.972 5

MCR 5.980(D) 24

MCL § 712 A.2 ..... 7, 26

MCL § 712A.20(d) 7

MCR 5.972(A) 13

Page

MCL § 712A.2(b)(1)(2) 22

MCL § 712A.18 22

MCL § 712A.19(3) 22

MCL § 712A.19(2) 22

MCL § 712A.19(b)(c)(i) 22

MCL § 712A.19b(3)(b)(i) 23

Ohio Revised Code 2151.35 23

Ohio Revised Code 2151.35.3 23

Ohio Revised Code 2151.41.4(E)(1) 23

Tenn. Code Ann. 37-1-29 23

Tenn. Code Ann. 37-1-147 23

Ken. Rev. Stat.620.090(5); 620.080 23

New York Family Court Act § 1055 27

New York Family Court Act § 1046(b) 27

New York Social Services Law § 384(b) 28

MCL § 712.19a 28

MCR 5.965 28

MCR 5.974(D) 22, 28

MCL § 712A.19a(e) 28

MCL § 712A.19a(f) 28

MCL § 750.135 26

Page

MCL § 750.136 26

SECONDARY SOURCE

Patton, *Privilege Against Self Incrimination*,
24 Georgia L. Rev. 473 (1990) 26

IN THE

Supreme Court of the United States

October 1990 Term

No.

In the Matter of MOHAMMED ALI AMER, SUEHIER AHMED AMER and ZINABE AHMED AMER, Minors

REHAB AMER and AHMED AMER,

Petitioners,

v.

DEPARTMENT OF SOCIAL SERVICES,

Respondent.

On Writ of Certiorari To the Michigan Court of Appeals

PETITION FOR WRIT OF CERTIORARI

OPINIONS OF THE COURTS BELOW

The following opinions are contained in the Appendix as indicated.

A. Opinion of Court of Appeals, June 12, 1990; B. Opinion of Judge Barsamian, January 9, 1989; C. Order of Termination, January 9, 1989; D. Disposition of Judge Barsamian, February 6, 1989; E. Opinion of Judge Maher, December 15, 1986; F. Order of Judge Maher, March 5, 1987; G. Opinion of Judge Maher, October 28, 1986; H. Opinion of Referee McKnight, September 4, 1984; I. Order of Michigan Supreme Court, July 31, 1990; J. Order of Michigan Supreme Court, September 28, 1990.

JURISDICTION OF THE UNITED STATES SUPREME COURT

The jurisdiction of this Court rests upon 28 U.S.C. § 1257 on the ground that the statutes and procedures of the State of Michigan on their face and as applied for permanently terminating parental rights violates the Fourteenth Amendment to the Constitution of the United States and federal statutes relating to parental termination.

DATES OF LAST OPINIONS OF THE COURTS BELOW

The Michigan Court of Appeals issued its opinion on June 12, 1990 (Appendix A) affirming the Probate Court's permanent termination of parental rights. The Michigan Supreme Court denied Appellants' application for leave to appeal on July 31, 1990. A timely motion for reconsideration was denied on September 28, 1990.

FEDERAL LAW INVOLVED

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> Nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Federal law prescribes standards for foster care applicable to the state of Michigan including: 42 U.S.C. § 671(a)(15)(16); 42 U.S.C. § 672 (a)(1); 42 U.S.C. § 6765(1);. See Lodging I

RAISING THE FEDERAL QUESTIONS BEFORE THE MICHIGAN COURTS

All the federal questions raised herein were raised before the Michigan Court of Appeals and the Michigan Supreme Court. The Michigan Court of Appeals addressed and rejected the Petitioners' federal equal protection and due process arguments in its opinion of June 12, 1990. Although the Court of Appeals alluded to the fact that Petitioners had not raised a self incrimination argument below[2] the Court of Appeals addressed and rejected

---

[2]The Court of Appeals at page 6 states: "it declines to address the respondents' Fifth Amendment argument in depth". Actually strenuous arguments were made by the Petitioners' trial attorneys, Mr. Strauss at a review hearing and by Mr. Baum at the termination hearing. Furthermore, a Michigan court on appeal can consider matters not raised at the trial level ". . . to prevent a miscarrige of justice." If the Amers would lose their children because an attorney was not as artful as he might have been at the trial, that would be a miscarriage of justice.

the self incrimination argument as well as Petitioners' argument that the Respondent violated federal statutes and that the Michigan Probate Code violated due process of law. (See Appendix H)

REASONS FOR GRANTING THE CERTIORARI

1. Child abuse and false allegations of child abuse are a pervasive social problem confronting state judiciaries. See Patton, *Privilege Against Self Incrimination*, 24 Georiga L. Rev.473 (1990). The Petitioners were deprived of their children, the deprivation of a fundamental right. 2. In permanent termination proceedings there is slight or no opportunity to raise federal issues in lower federal courts. See *Younger v. Harris*, 401 U.s. 37 (1971); *Moore v. Sims*, 442 U.S. 415 (1979); *Lehman v. Lycoming County Children's Services Agency*, 458 U.S. 502 (1982). Either a state case is pending or the state case is finished and moot or subject to res judicata. 3. The potential for erroneous decisions and unfair procedures is very great considering the state resources arrayed against generally unsophisticated parents. Psychological evidence is unreliable and subjective. The state standards for termination are vague and subjective. The due process standard of clear and convincing is difficult to comprehend and apply. There is a high probability that State officials involved in the process of dealing with allegations of child abuse will overreact to ambiguous but emotionally charged circumstantial evidence. Often, all of those involved in the termination process are inexperienced, unskilled, undersupervised, underpaid, and ill-equipped to make the life and death decision implicit in a decision to permanently terminate parental rights. Personal biases have an open season. In general State officials face self interest risks in never erring on the side of returning children, which they do not face if they err in removing children. 4. Neither state or federal courts have elaborated on the due process standard for permanent deprivation of parental rights since *Santosky v. Kramer*, 455 U.S. 745 (1982) was decided in 1982 despite hundreds of thousands of parental termination cases since that time. 5. A growing practice is the termination of parental rights because parents refuse to confess guilt to the satisfaction of state social workers and the courts, even as in the case at bar, *prior* to a clear and convincing hearing. 6. While many states require clear and convincing proof before children are deemed wards of the court and placed in temporary foster care, other states, like Michigan require only a preponderance of the evidence standard for placing children in foster care of unlimited duration. In Michigan, the findings at such a hearing are conclusive at a subsequent permanent parental termination hearing as in this case; the length of time in foster care is a presumptive factor in the termination decision as in the case at bar.

INTRODUCTION

Writing for the New Hampshire Supreme Court, Judge (now Justice) David Souter wrote: (See Appendix O-1)

This Petition gives this Court an opportunity to elaborate on the due process standard for terminating parental rights permanently,[3] providing a degree of national uniformity to the type of hearing due process requires. As currently defined, the clear and convincing burden of proof requirement has become a talisman sanctifying idiosyncratic views of what state officials feel is best for children. Courts have not succeeded in usefully defining the standard. The very factors cited in *Santosky v. Kramer*, 4355 U.S. 745 (1982) and in *Riviera v. Minnich*, 483 U.S. 745 (1987) which warranted a special concern for the fairness of parental termination procedures militate in favor of granting this petition. Those who become enmeshed in a termination proceeding are invariably families with health, financial, personal difficulties; they are the poorer, less educated members of society; they are the foreign born. They are multitudes whose stifled voices unwittingly invite bureaucratic manipulation, well meaning or not. They call upon this Court to grant this petition. Today, perhaps more so than at the time *Santosky* was decided, allegations of child abuse are rife. Many are well founded, and many not. *In re Martin*, 167 Mich App 715; 423 NW2d 327 (1988) which came (1988) within a whisker of perpetrating a tragic, judicial error is but one example where the allegations were not well founded. Nevertheless, in *Martin* as in this case, with an unfortunate physical illness, multiple fractures, enough to tax any parent's heart, the Martins were subjected to a painful, humiliating and protracted temporary foster care placement. They were required by state officials to falsely confess to having harmed their daughter under the threat of permanent termination. They refused. The Department of Social Services threatened. The Court of Appeals criticized the Department policy and ordered return of the child. But the practice continues.

Michigan's parental termination practice permitted findings made at a stage in the proceedings when a mere preponderance of the evidence was sufficient to be conclusive at a later permanent termination phase of the proceeding. It permitted temporary removal of children for unlimited duration without a clear and convincing standard. In allowing unlimited duration removal, Michigan law permitted a shift in the burden of proof because the *State* prolonged temporary foster care. It permitted the State to require parents to confess to having harmed their child, presuming that their refusal, together with the inexplicable calamity which befell a child, constituted clear and

[3]See Appendix J for litigation chronology.

convincing support for parental termination of rights to other healthy children. The Petition of Mr. and Mrs. Amer, parents of Mohammed Ali, born December 11, 1982, Suehier, born November 18, 1983, and Zinabe, born December 9, 1986, will allow this Court to hold that such procedures are not the process which is due when the state would sever the tie of parents to their children forever.

STATEMENT OF THE CASE

The petitioners emigrated to this country from Lebanon and are the parents of three children. A fourth child, Samier, a twin of Suehier, died November 22, 1985, just after his second birthday. As a result of his death, Suehier and Mohammed Ali, both in good health were immediately removed from the home of the Petitioners and placed in temporary foster care with Donna Moore. One year later, Zinabe was also removed from her mother at the hospital when she was 1 day old and placed in temporary foster care with Bernice Canup.

Permanent Termination Hearing (1988-1989)

All of the children remained in their respective foster homes until the decision of Probate Judge Y. Gladys Barsamian on January 9, 1989 terminating permanently the parental rights of the Petitioners to the three living children. Permanent termination was based upon a finding by clear and convincing evidence, MCR 5.974(E)(3), that the criteria of MCL § 712A.19a(e) and (f) were met. The statute on which Judge Barsamian relied provided in pertinent part: (See Appendix O-2) The termination decision of Probate Judge Barsamian was purported to be based on the "testimony and written documents produced as evidence" before her; and the "legal file and the social file in this matter, which are considered to be reflective of this case". (T 1/9/89 p1714) As a result of this reliance, the court below concluded: (See Appendix O-3)

The termination opinion of the trial court below was based not on evidence before it at the termination hearing, or even evidence adduced at the prior hearings, but on the *findings* of two different judges at prior adjudications where the standard of proof under Michigan law was merely a preponderance of the evidence, MCR 5.972, rather than the clear and convincing standard required in termination procedures by the Fourteenth Amendment. More specificlaly, the Court below did not rely on medical or contextual evidence as to the cause of Samier's fractures in 1984 nor on medical or contextual testimony as to the cause of Samier's death in 1985. In addition, the Court below predicated a finding that the Petitioners were irredeemable as proper parents because of their persistent protestation that they did not "kill" their

son Samier. The testimony of the experts, including those selected by the court or the State were overwhelmingly not in favor of termination, but in favor of reunification. See page 30 *supra*. There were essentially four types of hearings with respect to child protection: adjudication— to determine if the court should take jurisdiction over the children; disposition— to determine the appropriate remedy if the court had jurisdiction; review hearings; and termination hearings. Only the termination proceeding required proof by clear and convincing evidence. At the time the Court below required a confession, the clear and convincing hearing had not yet taken place.

Brief Summary of Two Hearings Prior to Termination

The first adjudication relied on by the Court below resulted from a petition from the Probate Court to take jurisdiction over Samier dated April 2, 1984 which alleged that Samier had 5 fractures. The petition alleged that the parents were unable to explain the fractures. The child also evidenced "bite" marks of a 16-year-old baby sitter. (Oakwood Hospital Medical Records 3/12/84) On September 4, 1984 Referee Gail McKnight found by a preponderance of the evidence that the Petitioners had abused Samier because they could not explain how four month old Samier had incurred 5 bone fractures, in varying stages of healing. Consequently the court had jurisdiction over the child. Samier was first placed with his aunt and then on October 20, 1984 with his maternal grandmother who spoke only Arabic and who lived next door to the parents. From 2/22/85 Samier was with the Petitioners from Friday through Monday. From 5/16/85 until his deathon November 22, 1985, Samier lived with his parents from Thursday through Monday. (Wayne County Case History 1/13/86 p 5) (hereinafter Case History). They successfully participated in parenting class required by the Department of Social Services. Nothing untoward occurred with respect to any of the children during this time.

Although pressure was brought to bear on the Petitioners by the Department of Social Services and the Wayne County Clinic for Child Study to confess to having intentionally inflicted Samier's fractures, they refused, steadfastly denying that they had harmed him. The Wayne County Clinic for Child Study psychiatrist, a Dr. Schornstein characterized the petitioners' protestations of innocence as a "denial phase". (Case History, p 6)

At a hearing on October 10, 1985, Tuesday and Wednesday were added so that Samier was then with his parents for the full week instead of Thursday through Monday. The Probate Court retained jurisdiction and imposed certain restraints on the Petitioners. (Case History p 10). The Probation Officer noted: (See Appendix O-4)

On August 13, 1986, the Circuit Court of Wayne County in a criminal proceeding acquitted the Petitioner, Rehab Amer of second degree murder of her son Samier. Six months later, the Department began conditioning return of the children on their confession of guilt in the death of Samier.

The second adjudication which the trial court relied on was at the adjudicative, pre-termination phase. Judge Maher issued an opinion dated October 28, 1986 resulting in a finding of December 15, 1986 that Mohammed Ali, Suehier, and Zinabe were within the jurisdiction of the Court pursuant to MCL § 712A.2 which provided: (See Appendix O-5)

Under the Michigan Court Rules 5.972 the standard of proof was by a preponderance of the evidence. The October 28, 1986 opinion of Judge Maher found that the Petitioners had "killed" Samier on November 22, 1985. The Court accepted the hypothesis that the injury could only be caused by a "high velocity" impact "to the back of the head", "one impact caused on a flat surface". (See Appendix G, pp 5-7). The court noted testimony that the type of injury would result from a force equivalent to a fall from two or three stories. (Exhibit p 7). A more detailed account of the medical testimony follows at pages 10-12. The Court's opinion alluded to the importance of the Koran to the Petitioners; noted that it took Emergency Medical Service 20 minutes between the injury and arrival; that Samier's hair was dry; that it was odd the Petitioners put a diaper on the baby; noted apparently confusing and conflicting reports about what Mrs. Amer said on November 22, 1985 as to how many children were in the bath tub and what Mrs. Amer said to the nurse at Oakwood Hospital; and what she said to the driver of the Emnergency unit, and what was said to Officer Bunce.

As for Mrs. Amer, the court "did not think her emotional reaction was "appropriate"." Later on when she testified as to when Samier died her emotions — again, I'm talking about basically her tears were appropriate and her demeanor also changed." (Exhibit p 10) But Judge Maher said he ". . . heard her orchestrate what would sound be t to the Court. . ." He concluded: "So, if you take all of the testimony put together and you just use common sense this is a situation where one of these two people is responsible for the death of that child and the other person is responsible for not protecting that child." Mohammed Ali and Suehier were made wards of the court. (See Appendix B, pp 3, 5-8, 10-11). Pursuant to MCL § 712A.20, Judge Maher could have permanently terminated the parental rights of the Petitioners. (See Appendix O-6)

But he did not. Nor did Judge Barsamian at several subsequent review hearings. Throughout these proceedings the Petitioners denied having harmed Samier but the petition for termination and the termination of the court below

was triggered by the refusal of the Petitioners to confess that they had intentionally caused the death of their son.

The report of John Derr, a psychologist affiliated with the Probate Court reported that a Dr. Day noted that Mrs. Amer had a Lebanese background and Mr. Amer Egyptian and "it might be of some value to find someone who speaks Lebanese or Egyptian so that a better understanding of the nuances of this family could be obtained." (Report August 31, 1984). This was not done, to the contrary, those independent social workers involved in the case having an ethnic affinity to the Petitioners, most particularly Nancy Adadow Gray, were barred by the court below from providing services to the Petitioners because of their belief that the Petitioners had not abused Samier.

First Adjudication — More Detailed

The Amers first came to the attention of the Department of Social Services after they took Samier to the Oakwood Hospital on March 12, 1984 complaining that Samier was eating poorly. Samier Amer had inexplicable medical difficulties from the day he was born. The Oakland Hospital medical records reported: "The parents complained chronically that the child does not eat well."

At 3 months of age both Samier and his twin Suehier were treated at Botsford Hospital for a blood infection. The Oakland Hospital report of a Dr. Johnson notes: "He was seen in my office for the first time following his hospitalization at Botsford on 2/27/84." The chief complaint was that Samier cried a lot. He was again seen by Dr. Johnson on 3/6/84. "At this time we decided to change the patient to Nutrigen formula which his mother was unable to obtain. Since 3/6/84 he has had continued weight loss and has refused to take more than 6 ounces per day of formula resulting the present admission." The Oakland Hospital Report of 3/12/84 indicated that the Petitioners tried a variety of techniques in an attempt to resolve the feeding problem including assistance by a visiting nurse. The Report observed: "The patient is comfortable lying in his mother's arms or on the table but holds its arms rigidly flexed and its legs rigidly flexed." (Oakwood Hospital records 3/13/84) Samier had been taken to a pediatrician for tonsillitis and teething problems. (Wayne County Juvenile Court Case History 1/13/86 p 10)

A review of the *findings* of Referee Gail McKnight dated September 4, 1984 (Appendix A) reveals the following: The Department of Social Services report ". . . shows the family to be residing in a fine, clean, suitable home and shows the family to be close knit, with bonding and no evidence of marital discord" (paragraph 5); the Referee reported the testimony of Rehab Amer and the efforts she had made with respect to Samier's difficulties

and health (paragraph 11); she reported in paragraph (12) the testimony of Ellen Rumman, a licensed MSW who reported on a warm and loving family relationship amongst the Amers with a good family background. In paragraph (13) Referee McKnight reported that Dr. Ruth Day, "an expert in psychiatry . . . acknowledged that there was something wrong with the child, Samier, which would have caught by the various doctors who viewed the child. . . ." Dr. Day believes it is necessary to have an interpreter to assist the family in preparing a final treatment plan." Dr. Day recommended against return of the child at that time, however.

In paragraph (10) the Referee reported on the testimony of a medical social worker, a Ms. Sabo: (See Appendix O-30)

Paragraph (6) refers to testimony of Dr. Carolyn Johnson, an "expert in pediatrics", hired by the Amers to care for their children, and refers to the interaction between doctor and child. Referee McKnight stated: ". . . the Court finds that Samier is a much different child than his siblings." "The doctor did arrange for the child to be admitted to Oakwood (Hospital) as a result of the mother's continued complaints regarding the child's feeding problems." In other words, the mother was seeking medical help for Samier all along. The Referee's report continued: "The doctor found the child to be a very stiff baby who is hard to manipulate. This trait is called being hypotonic.[4] A normal baby is more floppy, like jello." Reporting the Doctor's testimony, Referee McKnight said: "The doctor found the child to be very attentive to his mother and the child definitely preferred his mother to any other person." In paragraph (7) of Referee McKnight's findings, she reported regular contact between Dr. Sheldon Schore and the Amer family from December 5, 1983. Samier was born on November 18, 1983. In fact: "The family did bring the child to his attention January 20, 1984 when the child's right arm was limp. Dr.Schore referred the child to an orthopedic specialist, Dr. Mandell. The doctor did not file a 3200." (suspected child abuse report) At none of these many visits to physicians offices was evidence of child abuse noted.

The Referee found that Samier exhibited some human bite marks but does not state they were "unexplained" as the Michigan Court of Appeals stated. The report of Oakwood Hospital of 4/12/84 stated: "None of the areas were erythematous, . . ." (superficial scraping of the skin." (See Oakland Hospital

---

[4]Hypotonic means a diminished tone or tension in muscle or muscular tissue in consequence of ". . . which the muscles may be stretched beyond their normal limits." Stedman's Medical Dictonary). Thus the Referee reported that Samier was *not* a normal baby.

Report) The Referee referred to a number of unspecified tests conducted by some doctor "to rule out bone disease." The Referee's report stated: "There is no medical reason for the child to have a large number of fractures." In paragraph (9) the Referee noted the testimony of Dr. Osher, that the fractures were of different ages. In paragraphb (8), Referee McKnight reported on the testimony of a Dr. Suarez. Noting the several fractures, the Referee said: "The doctor based on his experience, concluded it to be likely child abuse." But Ellen Rumman, MSW, who had worked with the Petitioners thought that no abuse had occurred regarding Samier. (Wayne County Juvenile Court Case History, p 5-6). Further, the Oakwood Hospital medical report of Dr. Johnson has typewritten: "1. superficial human bites", "2. possible feeding problems', "3. possible muscle disorder." In someone's handwriting is a separate impression "4.____ child abuse." As a result of these findings, Referee McKnight found the allegations under MCL § 712A substantiated, and she made Samier a temporary Court ward. (A-2) The child was placed on or about Sepember 4, 1984 with the maternal grandmother, Fekenh Hamka (a-3) located next door to the parents. For all practical purposes the Amers took care of Samier for more than a year after this before he died on November 22, 1985. (Case History p 6)

There was no evidence or finding that the other children, Suehier or Mohammed Ali were abused. Although seen by medical personnel on many occasions there was no evidence that anyone had seen anything wrong with Samier until a fortuitous x-ray was taken at Oakwood Hospital on March 12, 1984. There was no evidence of such signs of child abuse as burn marks, bruises, lacerations, drugs, feces, sexual abuse, filth, starvation etc. There was evidence of a loving and caring family, not a dysfunctional one. There was no history of child abuse. In other words, all the circumstances were indicative of a non-abusive family except for inexplicable fractures and minor scraping of the skin, called bite marks.

On November 15, 1985, the Probation Officer "observed that the father was experiencing 'extreme difficulty' in settling Samier down, i.e. the child would ask for his bottle in Arabic and when given the bottle, would refuse it on several occasions, and/or would request to lie down, and when placed on the sofa would complain and request to be moved." (Case History p 11)

On November 22, 1985, Samier was dead.

Second Adjudication — More Detailed

The second adjudication relied on by the Court below in reaching its conclusion that the parental rights of the Petitioners with respect to Mohammed Ali, Suehier, and Zinabe should be permanently terminated was contain-

ed in the opinion of Probate Judge Martin Maher dated October 28, 1986, the consequence of the death of Samier. On October 28, 1986 and in his finding of December 15, 1986 Judge Maher decided that the three Amer children should remain in temporary foster care, finding that one of the Petitioners had "killed" Samier, that "one of the respondents was responsible for the nonaccidental death of Samier while the other parent failed to protect the child." This finding, based upon a preponderance of the evidence as required by Michigan Law was for the purpose of continuing jurisdiction of the Probate Court over the three Amer children, giving the Probate Court a variety of options, including a return home, or temporary foster care.

The testimony of the Petitioners indicated that on November 22, 1985, Samier was in the bathtub; the phone rang and Mrs. Amer went to the phone as was her practice when her husband was asleep, heard a thump, ran to the bathroom and found *Samier* unconscious. Her husband heard her scream and he called Emergency Medical Service. Nearby family members came to the house. There are no circumstances or evidence to contradict this account of Samier's death. No blood was found; no external bruises on Samier's body, not even on the exterior of Samier's skull. (a-a5) (T 12/15/88 at 1199-1211). The ex-ray of Samier's skull has thus far been lost. No diagnosis of Samier for osteogenesis imperfecta, copper deficiency, or other bone disease was made before or immediatley upon his death. The report of Dr. Sarniak, the Wayne County Medical Examiner, dated November 22, 1985 states: "SKULL: two views. large diastatic skull fracture seen extending from the lambdoid suture down towards the foramen magnum. A second transverse fracture is seen passing transversely across the occipital bone. These fracture fragments are separated by 3-4 mm. *No depression is seen.* The sutures are separated fairly markedly. No other fracture is seen." (emphasis added). Without explanation for its conclusion the autopsy states: (See Appendix O-7)

Additional versions of the testimony of Dr. Kanluen and Dr. Sarniak, Wayne County Medical Examiner, are contained in Appendix M.

On December 15, 1986 negotiations between Mr. Strauss, the attorney for the Petitioners and Judge Maher produced an agreement that Zinabe would become a "temporary court ward" based upon an understanding, not fully expressed in the transcript that the family would be soon reunited. (T 12/15/86 p 1-2). Judge Maher accelerated the next hearing date from July to March, 1987 for this purpose. (T 12/15/87 p 3). He stated: "I'm also going to be looking at what the workers have done to try and reunite the family." (T 12/15/87 p 3). Judge Maher continued: (See Appendix O-8)

In order to alleviate the problem of the temporary foster mother. Mrs.

Moore, undermining the ethnic background of Mohammed Ali and Suehier, and undermining the goal of reuniting the family, Judge Maher ordered the ". . . Department of Social Services to investigate possible Lebanese and Arabic homes; to look at the relatives of the parents. Hopefully, that will alleviate the problem. I don't think it's proper for Mrs. Moore to take the children to church other than a mosque." (T 12/15/86). Not only did Judge Maher not order confession as a condition of returning the children, but the tenor of his findings was that the childeren should be returned quickly. (T 12/15/86 at 4). Judge Maher was then transferred from the juvenile branch of the Probate Court to the estate branch and did not actually issue his order until after a motion by counsel for the Petitioners to compel Judge Maher to issue his order. When it was issued, the intention of promptly returning the children to the Petitioners was not expressed therein. On March 5, 1987 Probate Judge Maher issued an order that the Court had jurisdiction over Mohammed Ali, Suehier, and Zinabe finding that the three children were within the Juvenile Code, that the allegations of neglect and abuse of Mohammed and Suehier, and neglect of Zinabe were sustained, and temporary foster care continued: (See Appendix O-9)

The parents did attend counselling and parenting classes assidously. They gave a list which the Department of Social Services ignored. No family therapy was permitted by the lower court. On or about January 5, 1987, the Petitioners were asked by social workers assigned to the case to confess to having killed their son Samier as a precondition for the return of their living children. Up to that point this had not been a requirement. Judge Maher did not and never did approve or order it. The parent/agency agreement signed by the Petitioners and social worker dated 6/24/86 contained no such requirement. After Judge Maher's decision a new parent/agency agreement was presented to the Amers. The newly proposed agreement, never signed by the Petitioners would have obligated the Petitioners: "To attend counseling and also to acknowledge and accept responsibility for the severe abuse inflicted on Samier Amer, now deceased."

Judge Barsamian Enters the Case

The trial judge, Judge Y. Gladys Barsamian, entered this case replacing Judge Martin Maher on March 10, 1987. Judge Barsamian's ultimate decision to terminate the parental rights of the Amers was forecast in her opinion on May 29, 1987 at the conclusion of a statutory review hearing during temporary foster care: (See Appendix O-10) In the Court's order of June 1, 1987, following the statutory hearing, Judge Barsamian required the Amers to "accept responsibility for the non-accidental death of Samier"; and she said that "The children are not to be placed with relatives. The mother's

visits with Mohammed are terminated until further order of the court."

The Decision of Permanent Termination

On December 16, 1987 the petition for permanent termination was filed. It was filed because the Amers would not confess to killing Samier. (T 1/9/89 at 1688) and (T 10/18/88 at 940-942) Thereafter, for over a year from the filing of the petition, evidentiary hearings were held. The hearing to be held within 42 days pursuant to MCR 5.972(A) began January 12, 1998, was actually truncated in bits and pieces and did not end until January 9, 1989 with the termination decision referred to above.

Before any testimony was taken, a renewal of a motion was made for a conjoint evaluation of the Petitioners and their children. The Court denied the motion and responded, inter alia: (See Appendix O-11) As to the ultimate question of whether the parental rights of the Petitioners should be permanently terminated the overwhelming evidence of several experts including those selected by the Court and including the foster mother Mrs. Canup, was opposed to termination. Even the Wayne County Clinic for Child Study Director recommended against termination. The trial was limited by the Court to a single factual issue. That issue was whether or not the Petitioners had confessed to having killed Samier. Proof as to the *cause of death* of Samier was not an issue permitted to be explored by the trial court. No law enforcement, medical, or other expert testimony was offered as to that. As Mr. Ladd, the Court appointed and State paid attorney for the children stated in his Brief before the Michigan Supreme Court at page 19: (See Appendix O-12) The compliance by the Petitioners with various directions of the Court and the Department of Social Services to participate in psychotherapy, attend parenting class were apparently ignored by the court below. That the petitioners visited their children at every possible permitted moment was not considered; evidence of love and affection between the Petitioners and the children, such as a video and aural tapes, and photographs was not considered; requests for conjoint psychological examinations were denied by the Court below. No conjoint evaluation was done in this case despite several motions by counsel for the Petitioner to bring this about, despite Judge Maher's order alluded to above, despite the recommendation of the Wayne County Clinic for Child Study in its report of 2/19/88 that "the family begin work with an experienced therapist to do neutral family observations and interventions." (T 8/12/88) Petitioner's Exhibit B at 3). Indeed, visitation was made more difficult and demeaning by the workers assigned to the Amers. (a-34) (a-35).

After referring to the first placement of Samier in foster care in 1984 (T 1/19/89 at 12-13), Judge Barsamian alluded to the preliminary hearing con-

ducted by Probate Judge Martin Maher which had concluded in 1986, almost a year after Samier's death. She stated that Judge Maher had determined "that Samier Amer was killed." (T 1/9/89 at 14). Although Judge Barsamian referred to Judge Maher's finding during the adjudicatory phase, she did not rely on specific evidentiary support for her conclusion that the Amers "killed" Samier. (T 1/9/89 p 14). Judge Barsamian's opinion stated her basis for termination: (See Appendix B 24-28)

On the basis of the foregoing, the Court found that "there is clear and convincing evidence that paragraph (e) and (f) of MCLA 712.19A have been established." (T 1/9/89 at 1733-34).

The Court then addressed the "best interest of the children" (T 1/9/89 at 1734) and concluded that their best interest would be served by permanent termination. There are no findings in this regard. (T 1/9/89 at 1734)

In summary, Judge Barsamian's decision relied upon Referee McKnight's findings, and most importantly upon Judge Maher's findings made at the adjudiction preliminary phase of this proceeding. She did not articulate or recognize a distinction between the jurisdictional hearing (also known as a preliminary or adjudicative hearing), the statutory review hearing, or the termination hearing with respect to statutory criteria or burdens of proof. She merely assumed that refusal to confess was clear and convincing evidence supporting termination. She apparently assumed that proper efforts were made to reunite this family. A review of the transcripts reveals no evidence of any good faith attempt to reunite this fmaily. None.

During the termination hearing, Judge Barsamian would allow no testimony about discrimination against the Amers because of their ethnic background (a-38); would not listen to or admit into evidence tapes of the interaction between the Amers and their children; she would not talk to the children (T 12/15/88 1443-1445) would not allow questions about purposeful alienation of the children from their parents (T 12/16/88 at 1519-1523); refused to order neutral conjoint evaluation as requested by motion; would not allow any testimony about the competency of the Clinic for Child Study report of 1988 (T 12/16/88 at 1540-1542); and would not let the Amers' expert Dr. Gordon Blush, a psychologist with extensive experience (T 6/6/88 Exhibit Two) testify about the psychological effect of permanent parental termination upon the emotional well being of the children. (T 12/16/88 at 1533-1534) Most importantly, when counsel for the Amers attempted to question Ahmed Amer about the death of Samier, the Court said: "I agree with Mr. Ladd on the whole in terms of the matter has been adjudicated, findings of fact have been made." (T 12/15/88 at 1376).

Expert Testimony Opposed to Termination

The testimony of Dr. Ralph Epstein, selected by the DSS as the therapist for the Amers, Dr. Joseph Fischoff, a Court expert witness, and Mr. Derr of the Center for Child Study do not support termination. Quite to the contrary. The Children's Hospital Report of December 6, 1988, prepared at the direction of the Court below did not recommend termination. Dr. Gordon Blush did not recommend termination. Bernice Canup, foster parent of Zinabe recommnded reunification of the family. Dr. Ralph Epstein testified on May 13, 1988. His curriculum, vitae is impressive. (T 5/13/88 at Exhibit 1) He saw the Amers more than 50 therapy sessions. He testified that State social workers were only interested in whether theAmers had confessed. They pressured him to obtain a confession of guilt from his patients, the Petitioners, (T 5/13/88 at 69-70). However, he refused on the ground of inconsistency with his professional function. (T 5/13/88 at 70). (T 5/13/88 at 71) (T 5/13/88 at 71). (T 5/13/88 at 87); (T 5/13/88 at 87). However, Dr. Epstein testified that the Petitioners felt they bore some responsibility for what happened, (T 5/13/88 at 78) and accepted their responsibility from a psychological point of view. Without equivocation Dr. Epstein testified that the Amers were able to safely care for their children. (T 5/13/88 at 110-11); (T 6/6/88 at 167-168).

On October 17, 1988 Mr. Derr of the Wayne County Center for Child Study, who had evaluated the Amers based on five visits, testified on behalf of the State. (T 10/18/88 at 734-788). On re-cross-examination, Mr. Derr testified that: (1) the Amers accepted responsibility for Samier's death (T 10/18/88 at 855, 869, 880-81). Mr. Derr testified that the question of whether Mr. and Mrs. Amer were accepting responsibility for what had happened was one for their therapist, selected by the DSS (Dr. Epstein) to determine. (T. 880-881); (2) he was unable to say that psychological intervention could not be expected to prevent future harm to the children (T 10/18/88 at 854); (3) he does not know of what Mohammed-Ali is fearful (T 10/18/88 at 856); (4) Mohammed-Ali's fear is a diffused, general reaction which is not necessarily attached to his mother (T 10/18/88 at 870); (5) Dr. Al-Omari, Director of the Center for Child Study, believes that permanent custody should not be taken; instead, efforts should be made to reunite the family (T 10/18/88 at 870-73); (6) he saw no risk to brief, monitored visits between parents and children at the Amer home (T 10/18/88 at 877-78); (7) he was in favor of a neutral psycho-dynamic observation of Amers and the children (T 10/18/88 at 745); (8) if the goal was to reunite the family, brief visits at the Amer home were necessary (T 10/18/88 at 878). Counsel for the Petitioners questioned Mr. Derr further: (See Appendix 0-13)

Dr. Fischoff, the Court's witness, testified that the Amers have had no opportunity to show what kind of parents they would be since the children weren't allowed go go home. (T 12/16/88 at 1617-1618). No home visitation was ever suggested or permitted. The questioning of Dr. Fischoff continued: (See Appendix 0-14).

He testified that the impact of termination of parental rights on the children and their adoption "presents a problem" for the children. (T 12/16/88 at 1611). He found no evidence of mental illness on the part of the Amers. (T 12/16/88 at 1614-1615) As to how Samier died, from his reading of the report he said: "The second question about how Samier died. And that's very questionable and hazy to me." (T 12/16/88 at 1617) Nor did the Children's Hospital Report recommend termination: (See Appendix O-15)

Dr. Gordon Blush, a psychologist familiar with the case, after reviewing the entire record testified that there was no evidence to cause a significant doubt of the Amers' abililty to care for their children. (T 12/16/88 at 1505-1511)

The foster parent Bernice Camp, who had custody of Zinabe testified in favor of returning the children to the Amers. She also testified that in April 1987 she was threatened by DSS workers that in the event she testified in favor of the Amers, Zinabe would be removed from her as fast as she had been removed from the Amers. (T 12/12/88 at 1089-1090). (Zinabe *was* removed from Mrs. Canup immediately after her testimony). (T 12/12/86 at 1058) (T 12/12/88 at 1058). There is no evidence in the record that members of the Amer family, such as the grandmother, or other person with Arabic or Islamic traditions were not qualified to be involved with the Amer children as temporary foster parents and there is no evidence that any good faith effort was made to maintain the children in a traditional environment. Such persons were and are deliberately barred on the basis of ethnicity. (T 12/12/88 at 1036). (a-10) (a-43) (a-14).

No Efforts To Reunite the Family

The Department refused to make any effort to reunite the family unless and until the Petitioners confessed. In fact, the history of the Department of Social Services and the Judson Center (a private foster care agency under contract to the State), involvement with the Amers reveals no effort to reunite the Amer family. A parent-agency agreement was proffered to the Amers by the Judson Center in June of 1986. (T 10/18/86 at 923-924). The Amers signed it on June 24, 1986 and so did the foster care worker. (Appendix K) (T 10/18/88 Exhibit 1) (a-11). The Amers complied with it in all respects. A State social worker Sanford explained that the Amers were not required

to "accept responsibility" for abuse at that time "Because the court had not ruled on what happened in the parents' home at that point." (T 10/18/88 at 926). In fact the Judson Center and the DSS specified that the return of the children hinged oin the outcome of the criminal trial involving Mrs. Amer: (See Appendix O-16) As of January 7, 1987, the goal of the Department of Social Services and the Judson Center and the Probate Court was to reunite the family within nine months. (T 10/18/88 at 954). Thereafter, sometime in January 1987 a second and different parent agency agreement was proffered to the Amers which the Amers refused to sign. This agreement contained paragraph 5 which provided inter alia: (See Apppendix O-17)

Sanford testified: (See Appendix O-18) And she testified that "no effort will be made to this family" until the Amers accept responsibility for the death of their child. (T. 957) On May 8, 1987, the second trial day of the statutory review hearing while the children were in temporary foster care, Elyse Fine of the Judson Center assigned to the Amers, testified that no effort could or would be made to reunite the family until the Amers confessed. (T 5/8/87 at 234 and 309) The testimony of the DSS worker Sanford was that no effort was to be made to reunite the family until the Amers confessed. (T 10/18/88 at 957). She could not point to any specific effort made to reunite the family although she testified that everything that could be done to reunite the family was done. (T 12/12/88 at 1016). For example, she never consulted with the Amers' psychotherapist, Dr. Epstein. (T 12/12/88 at 1029). Sanford testified that there was no in house supervision of the Amer children because the children were never permitted to be back in the Amer house. (T 12/12/88 at 1039). Finally she testified that no effort was ever made to work out an acceptable parent agency agreement with the Amers or their therapist. (T. 975-976). She never even called Dr. Epstein, their therapist. (T. 976) There is no testimony concerning the rationale of requiring a confession of guilt in January 1987, when such a condition was not imposed before. Neither in December 1986 or January 1987 had any Court prescribed that the Amers confess guilt as a condition for reunification, or as a condition for the taking of any steps towards reunification. There was only insubstantial evidence to support termination before Judge Barsamian, either at pre termination hearings before her or at the termination hearing itself.

Evidence Favoring Termination: Refusal to Confess as Clear and Convincing Evidence for Termination

Dr. Wayne Simmons, employed by the Judson Center, a contract agency of the State with responsibility for Mohammed Ali (T 6/16/88 p 325), testified at a statutory review hearing in May of 1987, that Mohammed Ali had to

be "traumatized" by experiencing the death of his brother. His chief source of information was Ms. Moore the foster parent found by the trial court to have had a bad relationship with the Amers. Simmons never spoke to the Amers or observed an interaction between the Amers and their children. He saw Mohammed Ali one time. Mohammed Ali did not speak English when taken from his parents. (T May 8, 1987).

Dr. Shornstein, Elyse Fine, Martha Carey, and Julie Ribaudo were all employees of the State. Dr. Shornstein "evaluated" the Amers only prior to the death of their son. (T 6/17/88 418). He testified that he didn't know whether the Amers were fit parents or not. (T 6/17/88 at 435). He was unsure whether termination should ensue or not. He was asked on cross examination whether it made sense to have the family in therapy together. He answered, yes, and that it would help him to make an evaluation. (T 6/17/88 429-431). At this juncture in the testimony, Judge Barsamian interjected, there was no need for such a conjoint evaluation because it was a termination proceeding. (T 6/17/88 431-432). Dr. Schornstein testified that a patient in therapy should not be forced to deal with any particular issue in therapy. (T 6/17/88 447-448).

Elyse Fine was an inexperienced social worker, employed in her first job by the Judson Center, from May 1986 to July 1987, having received her B.A. in 1985 and MSW in 1986. (T 6/16/88 314, 317) This is what she actually testified to about the necessity for the Petitioners to verbalize guilt, i.e. confess. (See Appendix O-19)

Martha Carey succeeded Fine at the Judson Center. She received her MSW in May, 1987 and was another inexperienced social worker. She explained why she wanted a confession: "Because no progress could be made or no — We could not make any other reunification efforts until the parents worked on that issue." While speculating (with great empathy for Mr. and Mrs. Amer) that Mr. Amer lacked empathy for his children because he wanted to take Mohammed Ali's picture, and Mrs. Amer wanted to comb Suehier's hair, (these desperate people at their two hour institutional visit with social workers scrutinizing their every move) (See Ladd Michigan Supreme Court Brief at 15), Martha Carey testified that: "Mohammed had stated that he would like to live with Baba, referring to his father." (T 6/17/88 p 513) and to Dr. Coate, that he would like to visit with his mother. (T 6/17/88 p 532). She wrote that Mohammed Ali feels a conflict between his mother and the foster mother. (T 6/17/88 p 533). Julie Ribaudo had also been an employee of the Judson Center before joining the Wayne County Clinic. She apparently had seen the Amers in April 1988. She noted about Mrs. Amer: "The overriding pattern that I saw as she was born and raised in

Lebanon." This is not all she said of course, but it is the first thing she said.

She was asked by Mr. Ladd: "Q Should a parent be able to verbalize how things would be different in the home if the court returned the children to them? A It would be a good sign. It wouldn't be totally indicative that they would be able to employ it." (T. 612) However, she also testified that *Dr* Al-Omari, the Director of the Center for Child Study differed with her as to the requirement of a confession. (T. 623). She testified about the cooperativeness of the parents, that they were eager to get their children back and did everything asked of them, had been "punctual at appointments, eager and enthusiastic and very desirous of getting their children back", that Mrs. Amer missed her children, was depressed about the possibility of losing them. (T. 1627-628) *She said it was unusual for permanent termination to take place when the parents have been so involved. (T. 628-6792)*

She observed at a visit between the Amers and Mohammed Ali: "Also earlier in the time Ms. Moore (the hostile foster parent of Mohammed Ali and Suehier) had understood that Mohammed couldn't have visitation with Mrs. Amer. So when they walked into the lobby and Mrs. Amer was there, and there were no workers around, Ms. Moore snatched Mohammed back and pulled him out onto the porch until she could get approval that it was okay to bring him in." (T 588) When counsel for Petitioners asked Ribaudo whether Mohammed Ali's confusion was because of hostile communications from Donna Moore, the foster mother to Mohammed, the Court sustained the objection of the Attorney General to the question. (T. 636-637) Finally she was asked: (See Appendix O-20)

Kimberly Gunter Sanford, a protective services worker for the State, had a Bachelor's degree in psychology and sociology from McKendree College. (T. 914). In answer to the question as to why confession was necessary she answered: (See Appendix O-21) Explaining herself, she testified: (See Appendix O-22)

She explained the Department of Social Services rationale for permanent custody: (See Appendix O-23) Karen Noel was a limited licensed psychologist with an MSW which she received the previous year. (T. 243). She had seen Mohammed Ali 4 times, 2 in the presence of the foster mother Moore (T. 278). She never saw or contacted the Amers. (T. 291) She indicated that she was just getting to know Mohammed Ali. (T. 279). She was aware of the hostility between Moore and the Amers. (T. 279). She testified that for a long time, Mohammed Ali thought the firemen had his brother Samier. (T. 288) She didn't know what Mohammed Ali thought about the death of Samier. (T. 290) She testified: (See Appendix O-24) The testimony and

records indicate that the State social workers and Mrs. Moore did what they could to discourage a return of the children to their parents. The foster parent Donna Moore harbored negative feelings towards the Amers, attempting to alienate them from their parents, coaching them what to say to the social workers. (T 12/13/88 1161, 1163). She apparently took the children to a church instead of Mosque, called them Sue and Lee instead of their given name, and denigrated the Amers and their culture. The reports indicate Moore' overt and active hostility to the Amers. This was not in dispute. (T 12/13/88 at 1175) (T 12/16/88 Exhibit 14). Despite the Amers' strong objections to Moore, the State social workers and the Court prepetuated that placement. (T 12/12/88 at 1014-1016). Yet, Sanford testified that the Amers did everything asked of them *and except for the confession requirement would otherwise have recommended the return of the children.* (T 10/18/88 at 931-933). From the time their children were removed, the Amers have attempted to and did have as much contact with their children as the Court, the Department of Social Services, and the Foster Parents would permit. They came to the Judson Center or other facility week in and week out, they brought food and clothiNG and toys. Generally, the only personal contacts allowed during all the time were two hours per week at the Center. And even that was curtailed by Judge Barsamian, in the case of Mrs. Amer and Mohammed-Ali because of Mohammed-Ali's alleged "anxiety" towards Mrs. Amer. Nevertheless, a strong relationship exists between the Amers and their children. (T 12/16/88 at 1619)

All visitation ceased with the January 9, 1989 order of Judge Barsamian. No incident of any consequence ever occurred in the three years of weekly visits between the Amers and their children and the Court's findings and order refers to no evidence of any reason to bar visitation pending appeal except the unalterable plan to terminate the relationship of parents to children. On February 6, 1989 the Probate Court denied a motion to stay the termination order so that the weekly visitation by the Amers with their children could continue during this appeal. The Probate Court took no testimony in connection with the denial of visitation pending appeal but just assumed despite a three-year history to the contrary, that the Amers would violate the Court's order and otherwise act violently if they continued to see their children. The Michigan Court of Appeals and the Supreme Court refused to reconsider this decision.

The Michigan Court of Appeals Opinion

The Court of Appeals concluded that the findings by the Probate Court were not clearly erroneous, concluding that there was nothing wrong with

reliance on findings at earlier hearings; nothing wrong with making refusal to confess prior to a finding by clear and convincing evidence the basis for termination; nothing wrong with unlimited long term foster care after a preponderance of the evidence hearing; nothing wrong with refusing to provide services to reunite a family until after confession. The Court of Appeals also relied on the evidentiary and ultimate findings of Judge Maher and Referee McKnight adopting the findings of Judge Barsamian.

How Did Samier Die?

How then did Samier die? How did he suffer a single internal fracture with not a single exterior mark, except an inconsequential bruise on the cheek, which resulted in his death? Many children mysteriously die. Crib death for years was unexplained. They sometimes choke on food. They suffocate. Children die sometimes from unexplained fires. They sometimes fall and die. Middle class Americans are not usually accused of child abuse under such circumstances. Parents ought not to be presumed to be "killers" of their child when they can't explain a death, and all the circumstancial evidence points to a loving, caring, normal, family. After all, Mrs. Amer was acquitted of the criminal charge against her. Drs. Kanluen and Sarmiak hypothesized enormous force and a blunt instrument without making a sophisticated medical evaluation of the health of Samier as was done in the *Martin* case, *supra.* No postmortem tests for bone disease were done. Even they could not explain the absence of any corroborating sign that such force was used. Even they thought an accident was possible. Dr. Fischoff thought the manner of death was questionable and hazy. The best explanation for the tragedy that befell Samier was that this was a bathtub accident, that Samier suffered from some form of bone disease, similar to that of Ashley Martin, and died though a normal child might have survived. Perhaps it was osteogenesis imperfecta or temporary copper deficiency. The probability of disease is more likely than not, given the circumstances of Samier's life. A medical explanation described in medical journals is annexed describing bone disease and the difficulties of a differential diagnosis. These materials were presented to the Michigan Supreme Court but were not before the Probate court. (See Lodging 2)

ARGUMENTS FOR ALLOWANCE OF THE WRIT

If the decision below stands, for the rest of their lives, the Petitioners will experience the permanent termination of their parental rights to Mohammed Ali, Suehier, and Zinabe as recurring deaths of their children. They will ask over and over again, as they ask now: "How could such injustice happen to them in America?" To the children, a shattered culture, a torn bond

with real parents will remain raw, misshaping their destinies until the end of their days. Legal argument and public importance aside, the human catastrophe which this proceeding involves should prompt this Court to examine this matter with extraordinry care. This is the wrong era for the Amers to have had a child who died from an inexplicable fracture. The newspapers howl with stories of abused children. There are not stories of children wrongfully removed from parents. And there are stories of terrorism, hostages, and volatility concernilng those of Arabic descent. There are not stories of devoted parents, devout, law abiding.

A Fundamental Right

The Michigan parental, termination procedure which this Petition challenges is at odds not only with *Santosky v. Kramer, but with the formula of Mathews v. Eldrige,* 424 U.S. 319; 96 S.Ct. 893; 47 L.Ed 2d 19 (1976). In Michigan it is the adjudication stage, the preponderance of the evidence state that casts the die. The findings at this early stage rule the termination stage. Such findings were the basis for providing no services towards reuniting the family. Providing for open ended temporary foster care can only exacerbate familial relationship stress from which adverse inferences can be drawn. Relying on confession as the test for a fit and proper home creates an insurmountable burden for the innocent. Thus the private interest at the adjudication stage is the equivalent of the private interest at the termination phase; the risk of error is greter at the adjudication stage because the criteria is more general and the point is merely to take jurisdiction over the child. It is not legal theory which fires this argument. It is the reality of litigation in which the deck is stacked.

Michigan law relating to temporary foster care and permanent termination was amended in 1988. The amendments leave in place the procedures challenged by this Petition. In fact, Michigan law now diverges even farther from a due process standard than that applicable to the instant case. MCL § 712A.19(b); MCR 5.974(D) A child without proper "custody or guardianship" (b)(1) or in an "unfit home" "by reason of neglect, cruelty, drunkenness, criminality, or depravity" comes within the jurisdiction of the Probate Court. MCL § 712A.2(b)(1)2). Foster care of unlimited duration may ensue, MCL § 712A.18, with periodic review at not less than 91-day intervals during the first year after disposition MCL § 712A.19(e3), and then at 182-day intervals. MCL § 712A.19(2) As for permanent termination, if the parent was a "respondent" at a first stage jurisdictional hearing and more than 182 days have elapsed from a dispositional order and "the court finds by clear and convincing" evidence that: (See Appendix O-25)

Physical injury of a child, "caused" *even without fault* by the parent, or not prevented by a parent can result in permanent termination if there is a "reasonable likelihood" of injury in the foreseeable future. MCL 712A.19b (3(b))(i). See *Jacobs v. Smith*, 433 Mich 24, 444 N.W.2d 789 (1989). Findings at the jurisdictional stage of this proceeding are conclusive at the termination stage. The failure to confess to intentional wrongdoing found at the jurisdictional phase is clear and convincing proof that innocent parents are unable to provide proper care and custody within a reasonable time for a child. Unexplained health difficulties of one child per se, constitutes clear and convincing evidence sufficilent to warrant termination of parental rights as to others who are healthy. *In the Matter of Mohammed Ali Amer.* (Appendix A, June 12, 1990)

Ohio law appears to be much more in line with the requirements of due process. There, an adjudication that a child is abused, neglected or dependent requires clear and convincing evidence at the first stage of the child protection proceeding. Ohio Revised Code 2151.35. Long term foster care specifically requires a finding by clear and convincing evidence that it is in the best interest of the child. Ohio Revised Code 2151.35.3. Diligent and good faith services provided toward reunification are a necessary precondition for termination. Ohio Revised Code 2151.41.4(E)(1); *In re Lay*, 539 NE 2d 664 (1987). Findings at one stage of a proceeding cannot be used at another stage. *Elmer v. Lucas County Children's Serv. Bd.*, 523 NE 2d 540 (Ohio App 1987). In Tennessee, where temporary foster care can be of unlimited duration, the finding that a child is dependent or neglected requires clear and convincing evidence. Tenn. Code Ann. 37-1-129. In the event temporary foster care exceeds one year, and it is in the best interest of the child, parental rights can be permanently terminated. Tenn. Code Ann. 37-1-147 See *State Department of Human Services v. L.D.*, 6568 S.W.2d 112 (1983). Kentucky on the other hand follows a system much like that of Michigan, temporary foster care of unlimited duration based upon a preponderance of the evidence. Ken. Rev. Stat. 620.090(5); 620.080. Whether the other elements of Michigan's practice are followed in Kentucky is not evident .

Clear and Convincing

In *Santosky v. Kramer*, 455 US 745 (1982), this Court said: "Before a state may sever completely and irrevocably the rights of parents in their natural child, due process requires that the state support its allegations by at least clear and convincing evidence." This result flowed from the "Court's historical recognition that freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment."

In termination proceedings, the risk of error is too great if only a preponderance of the evidence standard applies: (See Appendix O-26) The use of the clear and convincing standard in termination proceedings was again explained in *Riviera v. Minnich*, 483 US 574 (1987). (See Appendix O-27)

The *Santosky* standard flows from the value society places on the integrity of the family — earning it the protection of a fundamental right. *Stanley v Illinois*, 405 U.S. 645 (1973); *Griswold v Connecticut*, 381 U.S. 479 (1965). A parent's right to custody ofher child is one that is "far more precious . . . than property rights." *May v Anderson*, 346 U.S. 528, 533 (1953).[5]

On June 25, 1990, this Court decided the case of *Cruzan v. Director, Missouri Department of Health*, U.S. ____, 101 S.Ct. 2841 (1990) The clear and convincing standard of *Santosky v. Kramer, supra*, was considered. This Court noted in *Cruzan* that the higher standard was required because there was no turning back from an erroneous decision, drawing an analogy to the parental termination of *Santosky*. Clear and convincing has been defined to mean that the party with the burden of persuasion may prevail only if he can "place in the ultimate factfinder an abiding conviction that the truth of his factual contentions are highly probable." *Colorado v. New Mexico*, 467 U.S. 310 (1984) The Pennsylvania Supreme Court has defined clear and convincing to mean "testimony that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without

---

[5]The importance of the right has been recognized by 25 U.S.C. ____, and by MCR 5.980(D) which require that parental rights of American Indians can be terminated only by proof beyond a reasonable doubt, but all others, including these Petitioners of arabic descent can lose their children by clear and convincing evidence. The "equal protection" clause of the United States Constitution, Amendment XIV, generally does not permit classification based on race. See *Palmore v Sidoti*, 466 U.S. 429; 104 S.Ct. 1879; 80 L.Ed 2d 421 (1984). Strict scrutiny is usually applicable. Native Americans have been exempted from strict scrutiny because classifications favoring Native Americans have not been deemed racial in character. In *Morton v. Moncari*, 417 U.S. 535, 94 S.Ct. 2474, 41 L.Ed 290 (1974) although the discrimination was sustained, its rationality was clear and the Court majority noted at note 24, that the preference applied to tribes, but not those who merely "are recially to be classified as 'Indians'. It was not "racial". Michigan law on the other hand is racial in nature. cf. *Washington v. Yakima*, 439 U.S. 463, 99 S.Ct. 740, 58 L.Ed 740 (1978); *Fisher v. Dist. Court*, 424 U.S. 382, 96 S.Ct. 943, 47 L.Ed 106 (1976). With a fundamental right at stake, involving the permanent severing of children from their culture and their family, the policy behind the higher standards for Native Americans applies equally to Arab Americans and thus the distinction between Native Americans and others is without any rational basis if that be the test.

hesitancy, of the truth of the precise facts in issue." *Matter of Sylvester*, 521 Pa.300, 304 555 A.2d 1202, 1203-04 (1989) If the words clear and convincing mean clear and convincing, if we regard the permanent severance of children from parents as one of the most significant intrusions by the state upon lives of citizens, then the record below does not support such a drastic step. The Amers' parental rights have been unjustly terminated as a result of the Probate Court's adherence to at least three irrebuttable presumptions: (1) a child who suffers from unexplained fractures resulting in death was "killed" by the parents and have an unfit home for their remaining children; unless (2) they confess to having abused the child. (3) The third presumption is that the State's obligation to provide services is satisfied if no services are provided until parents confess to a crime. The existence of these presumptions ob literated the State's heavy burdern of proof and deprive the Amers of Due Process of law in violation of the United States Constitution, Amendment XIV.

Irrebutable Presumptions

Where a liberty interest is at stake, Due Process narrows the use of presumptions since they result in a shift of the burden of proof. *Francis v. Franklin*, 471 US 307 (1985). See *Washington County Department of Social Services v. Mary Alice Clark*, 296 Md. 190; 461 A.2d 1077 (1983) wherein the Court of Appeals of Maryland, in strikilng the state statute, found the statutory presumption which ensued when a child was in foster care 2 years a due process violation.

In effect, the Court below placed the burden of proof upon the parents to prove at a termination proceeding which allowed no evidence as to essential facts found at an earlier hearing, that the ultimate finding to terminate their parental rights was wrong; unless they confessed wrongdoing of that which they denied, of that which they were found innocent, under circumstances where their innocence is more likely than guilt. The Court of Appeals stated that parents can be required to come forward with evidence that the family situation has improved. The Probate Court and the Court of Appeals equated confession of guilt with going forward. In this case, in effect, an impossible burden of proof was placed on the parents because they were innocent. If they were guilty, and would truthfully confess, presumably the children would have been returned.

Confession and Fifth Amendment

Not every parent who refuses to admit intentionally harming a child who is injured is lying, or into denial. They may be innocent notwithstanding

a preponderance of the evidence jurisdictional finding of abuse. There apparently is a growing tendency to terminate parental rights of those who insist on their innocence because a refusal to confess guilt is deemed clear and convincing evidence of permanent unfitness. The extent of this practice may be more widespread than the reported cases indicate. *Dutchess County Dep't. of Soc'l. Serv. ex rel. T.G. v. Mr. G.*, 534 NYS2d 64, 69-70 (Fam. Ct. 1988) Permanent termination of parental rights to children placed in *temporary* foster care, after a preponderance of the evidence hearing, because parents insist on their innocence *before* the clear and convincing temination hearing, and the circumstances of the harm are open to unsubstantiated speculation; and in the only criminal case brought, the parent is found "not guilty", has no rational basis. Whether it violates the due process right not to be forced to incriminate onself, or it violates due process because it is irrational, the insistence upon coercing a confession from the Petitioners in this case is shocking. This is so because it occurred after *Martin, supra. In Re Martin, supra* at 731-32.

In *Martin*, Ashley Martin, also about three months old, was made a temporary ward of the Probate Court after a phsyician detected numerous broken bones and a Petition was filed. Despite their steadfast denial that they had abused Ashley and the presentation of evidence that Ashley may have had a medical disorder which made her susceptible to bone fracturs, a Probate Court jury found enough to place the child in temporary foster care. *Id.* at 719. Three years later, despite the opinion of at least two therapists that it would be safe to reintegrate Ashley into the Martin home, she remained under foster care. This was due to respondent-parents' refusal to accede to the demand of state-employed social workers that they "accept responsibility" for their daughter's injuries. *Id.* at 721, 728.

To require the Amers to confess or acknowledge that they had abused their son would place them in jeopardy of permanent parental termination pursuant to MCL § 712A.20(d); MSA 27.3178 (598.20d) and criminal prosecution under MCL § 750.135; MSA 28.330, and MCL § 750.136; MSA 28.331; as well as a prosecution for perjury. Regardless of the purported justification for requiring confession, such a requirement violates the Amers' Fourteenth and Fifth Amendment privilege against self-incrimination. That the Amers testified at various hearings is beside the point, because the Petitioners did not refuse to testify. They refused to testify falsely in the manner in which the Respondents wished, under threat of permanently losing their children.

The broad application of the privilege against self-incrimination reflects this Court's disdain for coerced confessions. In *Lefkowitz v. Cunningham*,

431 US 801; 97 S Ct 2132; 53 L Ed 2d 1 (1977), this Court held that a New York statute requiring an officer in a political party to testify pursuant to a subpoena or lose his office violated the Fourteenth Amendmnent and Fifth Amendments. The Court reasoned that: (See Appendix O-29)

Thus, the threat of direct economic sanctions or forfeitures supplies an inadequate basis on which to revoke the privilege of the Fifth Amendment. Surely, the loss of parental rights is even more compelling. A number of state courts have dealt with the foregoing issue.

The Supreme Court of Minnesota held that the refusal of parents to comply with a trial court requirement that they confess guilt and explain the death of their nephew, could not be the grounds for termination of parental rights to two unharmed children. The requirement violated their Fifth Amendment rights. *Matter of Welfare of J. W.*, 415 N.W.2d 879 (Minn. 1987). However, the court went on to state "Therapy, however, which does not include incriminating disclosures, may be ineffective; and ineffective therapy may hurt the parents' chances of regainilng their children." This is only an "assumption." In the case at bar it was a presumption. *In re Jessica b.*, 254 Cal Rptr 833 (Cal. App. 5 Dist. 1989) approved the practice of requiring confession after a dependency hearing subject to a clear and convincing standard of proof. Welfare and Institutions Code of California § 361. The evidence of abuse was substantial, and there had been a criminal conviction. All that was at stake was unsupervised visitation. Under California law there was no threat of self incrimination. The court concluded: "William's failure to admit fault indicates that he is neither cooperating nor availing himself of the services provided." at 891. *Dutchess, supra,* was a permanent termination procedure. Despite two findings that the parents had sexually abused their son, the parents maintained their innocence. The only issue was whether the refusal of the parents to admit in counseling that they committed incest can be the basis for termination of parental rights. There were two findings in prior hearings that the child was in fact sexually abused by the parents. The state argued that without an admission that they committed sexual acts on the children "there can be no meaningful treatment." 534 NYS 2d 64 (1988). Despite total compliance with the dispositional order, including counseling, group treatment, regular visits with the child and powerful expert evidence that the parents were not a danger to the child, the court terminated their parental rights finding that without admission of guilt, the evidence was clear and convincing that the parents had failed to plan for the child and therefore termination was proper. 534 NYS 2d 69. In New York, temporary foster care is of unlimited duration, Family Court Act § 1055, based on a preponderance of the evidence. Family Court Act § 1046(b).

Permanent termination requires clear and convincing evidence of the best interest of the child. Social Services Law sec 384(b).

This Court recently held in *Baltimore City Department of Social Services v. Bouknight*, 110 S.Ct. 900, 907-909 (1990) that there is no Fifth Amendment privilege to refuse to produce a child, the "particular object of the State's regulatory interest". *Bouknight* is clearly distinguishable from Petitioners' case. The Respondent here imposed a verbal admission of guilt as a therepeutic technique under pain of parental termination, not to prevent an ongoing danger to a child.

The Michigan Statutory Scheme for Terminating Parental Rights was Unconstitutional on its Face

MCL § 712.19a; MSA 27.3178 (598.19a); MCR 5.965, MCR 5.972 and MCR 5.974 are unconstitutional on their face and as applied in that they sanction permanent termination of parental rights without a prompt and meaningful hearing, permitting indefinite long term temporary foster care, and uncircumscribed bureaucratic and judicial discretion as described above, thereby undermining the due process clause of the U.S. Constitution Article XIV and the clear and convincing evidence standard of *Santosky v. Kramer*, 455 U.S. 745 (1982). MCL § 712A.19a(e) is not independent of the consequences of the preliminary hearing and determination. The preliminary hearing is really the dominant point in the proceeding. The standard there is "jurisdiction" by a preponderance of the evidence. By the time the State gets ready to terminate the parental relationship, it has had every opportunity to create its own case. MCL § 712A.19a(f) illustrates the point precisely, for there, the state need only prolong temporary foster care for more than two years to trigger an apparent shift in the burden of proof to the parents to prove a proper home or probability of proper home. A shift in the burden is impermissible under Michigan law but as a practical matter, it does just that.

One final point: in Michigan, the proof requirement in the termination phase is "clear and convincing." At the criminal trial of Rehab Amer, the standard of proof was of course beyond a reasonable doubt. A collateral estoppel approach should be applied because of two special factors: Judge Barsamian called the Amers "killers" and based her termination order, and visitation order, upon that. This very fact was adjudicated in favor of the Amers in the criminal trial of Mrs. Amer. Mr. Amer was never charged. Secondly, the difference between clear and convincing and beyond a reasonable doubt is so abstract, that in light of the absence of objective criteria

in the State of Michigan and in many other states, and in light of the severe consequences, the "not guilty" verdict in the criminal case should preclude any negative inference to be drawn from the death of Samier as a basis for permanent termination. They were not "killers".

The Respondents Violated Federal Statutes with Respect to Foster Care

State agencies are required to comply with the Adoption Assistance and Child Welfare Act of 1980[6] as follows: 42 U.S.C. Sec 671(a) 15 requires that the Department of Social Services make "reasonable efforts. . . (A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from the home, and (B) to make it possible for the child to return to his home. . ." There is no evidence that this was attempted.

The Act also requires that a case plan be developed for each child. 42 U.S.C. Sec. 671(a) 16; 42 U.S.C. Sec. 675(1). A plan is defined as follows: The term "case plan" means a written document including at least the following: A description of the type of home or institution in which a child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child in accordance with Section 672(a)(1) of this title. It includes a plan for assuring that the child receives proper care and that services are provided to the parents, child and foster parents in order to improve the conditions in the parents' home. It should facilitate return of the child to his own home or the permanent placement of the child, and addresss the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan. The plan must be a written document available to the parent. It must include a discussion of how the plan is deigned to achieve a placement in the least restrictive setting available and in close proximity to the home of the parents, consistent with the best interest and special needs of the child. There must be a description of the services offered and the services provided to prevent removal of the child from the home and to reunify the family.

With respect to the Amer children, no attempt was made to reunify the family and the so-called "plan" was not that at all.

---

[6]The text of the applicable federal law and regulations are contained in Appendix I.

The Probate Court Displayed Bias and Prejudice

Judge Barsamian characterized the Petitioners as "killers" prior to the termination hearing before hearing a word of testimony. The Court below plainly allowed her strong feelings to interfere. The Amers were really deprived of a fair and impartial hearing. For example, on February19, 1988, Judge Barsamian ordered the Amers to cease obtaining counseling or therapy from the social worker of their choice, Nancy Adadow Gray. Examples abound. (T 2/19/88 at 36) and (T 1/9/89) (T 12/13/88 at 1140-1141); (T 12/13/88 at 1179-1182, 1184-1186, 1189-1192); (T 12/1288 at 1024); (a-39) (T 1/12/88 at 19-31). In addition, the Judge barred any member of the Amer family from having temporary custody.

Allegations of child abuse obviously have a propensity to evoke powerful feelings. But this Court ought to go beyond even its own feelings so that great societal harm is not perpetrated. The seriousness of child abuse and the power of the State to sever children from families requires the highest standards of competence and the highest standards for ensuring that severance is indeed justifiable. This is the standard which the Fourteenth Amendment requires.

CONCLUSION

For the foregoing reasons, Petitioners Rehab Amer and Ahmed Amer respectfully request this Court to grant this Petition for a Writ of *Certiorari* to the Supreme Court or Court of Appeals of Michigan, and to reverse the permanent termination of their parental rights with respect to their children, Mohammed Ali, Suehier, and Ziabe.

Respectfully submitted,

RICHARD A. SEID
University of Detroit
School of Law
651 East Jefferson
Detroit, Michigan 48226
313-596-0207

Counsel for Petitioners